

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-518

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JAN 08 2009

JOEL SCHNEIDER
U.S. Magistrate Judge

OPINION/REPORT
OF THE
SPECIAL MASTER

In Regard to the Matter of:

Bayside State Prison
Litigation

WILLIAM RICCI (MELLOW)

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * *

FRIDAY, DECEMBER 12, 2008

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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5 Transcript of proceedings in the above
6 matter taken by Theresa O. Mastroianni, Certified
7 Court Reporter, license number 30X100085700, and
8 Notary Public of the State of New Jersey at the
9 United States District Court House, One Gerry Plaza,
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1 JUDGE BISSELL: I am now reopening
2 proceedings in the case of William Mellow also known
3 as William Ricci.

4 This opinion/report is being issued
5 pursuant to the directives of the Order of Reference
6 to a Special Master and the Special Master's
7 Agreement and the guiding principles of law which
8 underlie this decision to be applied to the facts
9 upon which it is based as set forth in the jury
10 instructions in the Walker and Mejias jury charges to
11 the extent applicable to the allegations of Mr.
12 Mellow.

13 As finalized after review under Local
14 Civil Rule 52.1, this transcript will constitute the
15 written report required under paragraph seven of the
16 Order of Reference to a Special Master.

17 Mr. Mellow describes essentially two
18 incidents that occurred to him at the hands of SOG
19 officers while he was housed in A Unit. And his
20 testimony is found in the transcript of November 20th
21 of 2008.

22 Once again, I'm not going to recite it
23 at length here and I don't feel it's really necessary
24 to lay it out at length in the opinion either.

25 He testified beginning at page 68 of

1 the events surrounding his cell extraction and march
2 to the gym for the purposes of the search of A Unit.
3 That testimony, even if taken at face value, does
4 demonstrate some rough handling of him in the course
5 of those events. However, even his description does
6 not rise to the imposition of excessive force with
7 Eighth Amendment standards.

8 Beginning at page 73 of the transcript
9 he talks about a second incident also with SOG
10 officers. Although the testimony is amplified
11 somewhat in other portions of the transcript, I think
12 a valid description of it as he states it can be
13 found beginning at the bottom of page 73 and running
14 on to page 74 and I'll recite it here because it's
15 not too lengthy.

16 Beginning at page 73, line 25.

17 "But the main thing was when they came
18 to my room the following Monday", (and this by the
19 way was the Monday after the cell extraction), "two
20 SOG officers came upstairs, they came all the way
21 down the row, they cracked my door and said they
22 wanted me down the gym. I said why do you want me
23 down the gym and they said we want you to clean up.
24 I said you got people out there cleaning up and they
25 said I don't care, let's go. And they took me out of

1 there and took me down in the gym. They took me in
2 the back of the equipment room where they keep the
3 equipment and there was about eight officers there
4 and they said, oh, you're the tier rep. You're the
5 mouthpiece of these assholes. And I said yeah, so?
6 So the officer that was standing in the back of me
7 smashed me right in my mouth with a night stick. And
8 then I fell and they started kicking me and hitting
9 me with a stick. It was on after that. After they
10 was done they told me to go in the back bathroom and
11 clean up and if I say anything or complain, they're
12 going to make sure I have a reason to go to Saint
13 Francis. So I was just happy to get back to my room,
14 I didn't want no problems. They did what they did
15 and that was that."

16 Continuing over to page 76 beginning at
17 line ten.

18 "Question: What injuries did you
19 suffer from that encounter in the back room at the
20 gymnasium that you just described to us? What
21 happened to you?

22 "Answer: They cracked my teeth. My
23 gums was bleeding, right, and I had like contusions,
24 you know, from the bruises on my legs, my calves, my
25 arms, you know, like that.

1 "Question: When they cracked your
2 teeth, which of your teeth did they crack?

3 "Answer: Like the front two, there is
4 one on the bottom now that's cracked and they were
5 just loose, I mean, you know."

6 He also describes this beating as
7 taking some 30-plus minutes duration. Now, I realize
8 that sometimes if you're involved in an event such as
9 that, it can seem like it's forever even though it's
10 a very small number. However, let's say it was even
11 half or a third of that time period, a beating by
12 some eight officers from which the plaintiff then
13 could walk away and return to his cell on foot is,
14 frankly, highly improbable.

15 In addition, he talked about damage
16 inflicted upon his teeth and the fact that ultimately
17 they had to be extracted because they had been
18 chipped and cracked by this beating. However, the
19 testimony of Doctor Colella in Exhibits D-509 and 510
20 established something quite different and further
21 cast considerable doubt upon the credibility of Mr.
22 Ricci's testimony.

23 Doctor Colella testified, and there was
24 nothing in either his direct or cross which would
25 indicate that this testimony was at all inaccurate,

1 and as amplified by Exhibits 509 and 510, that Mr.
2 Ricci arrived at Bayside with serious problems with a
3 number of his teeth: Those spreading all the way
4 across the front of his mouth from number four
5 through number 12 in his upper front and from number
6 22 through 27 in his lower front. These were bad
7 teeth. There had already been prior extractions of
8 different teeth at different points in the time
9 period there. He had had dental examinations which
10 had revealed well in advance of these events the
11 conditions of these teeth and their need to be
12 pulled. He had been scheduled for a further
13 evaluation on the 18th of July, 1997 before this
14 alleged incident and hadn't shown up for it.

15 As the doctor testified, quite
16 believably, the conditions of these teeth were either
17 the product of extreme decay or periodontal disease.
18 In either case they were scheduled for and were going
19 to have to come out. The teeth were, in fact,
20 extracted in groups from that area of his mouth at
21 the later dates of September 16, October 21 and
22 November 18, 1998.

23 There is nothing in the rather
24 extensive chart here devoted to the subject of Mr.
25 Ricci's teeth that gives any indication whatsoever

1 that these teeth had been cracked or otherwise
2 traumatized by one or more blows.

3 In the period after August of 1997 Mr.
4 Ricci repeatedly failed to show up for scheduled
5 dentistry. This certainly is not consistent with
6 testimony that his teeth had actually been cracked
7 and presumably further traumatized by events such as
8 he described here. That, when coupled with his
9 description of a beating from which presumably he was
10 able to walk away, once again, casts substantial
11 doubt on the accuracy and, indeed, the very fact of
12 the testimony that he presented with regard to this
13 beating.

14 And while I said there was a certain
15 logic that the SOG officers might want to intimidate
16 and neutralize a tier representative, other than
17 that, there is very little that would support the
18 plaintiff's recounting of this alleged incident.

19 Once again, he has failed to establish
20 his burden of proof that the events which he
21 described in fact occurred.

22 Finally, although not every item of
23 evidence has been discussed in this opinion/report,
24 all evidence presented to the Special Master was
25 reviewed and considered.

1 For the reasons set forth above, I
2 recommend in this report that the district court
3 enter an order and judgment of no cause for action
4 with regard to William Ricci.

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C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Theresa O. Mastroianni, C.S.R.
Notary Public, State of New Jersey
My Commission Expires May 5, 2010
Certificate No. XI0857
Date: January 2, 2009